

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff

v.

THIRD COAST TOWING, LLC, ET AL.

Case No. 3:16-cv-34-CWR-FKB

**UNITED STATES' MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS
AND RESPONSES TO INTERROGATORIES BY DEFENDANT NATURE'S WAY
MARINE LLC**

Pursuant to Federal Rule of Civil Procedure 37, Plaintiff United States of America ("United States") hereby moves for an order compelling Defendant Nature's Way Marine LLC ("Nature's Way") to respond to Requests for Production and Interrogatories. Counsel for the United States hereby certify that they have made a good faith attempt to obtain this information without court action. See attached Declaration of Elise Feldman, May 4, 2018 ("Feldman Decl.").

On March 21, 2018, the United States served its Requests for Production and First Set of Interrogatories. [Document Nos. 84, 86.] Nature's Way sought an extension for discovery, which the United States denied, as explained below. Nature's Way has provided no responses at all to any discovery requests. The following outlines the events that have occurred regarding the outstanding discovery requests from the United States.

- On February 22, 2018, during a meet and confer between counsel for all parties, the United States proposed that the parties attempt to reach stipulations to resolve most issues for trial, and alleviate the need for most discovery in this matter.

Counsel for Nature's Way indicated he was amenable to the stipulations on most issues and would discuss with his client. Feldman Decl. ¶ 2.

- The United States sent out a proposed draft stipulation on February 26, 2018 asking for a response within a week, but received no response from Nature's Way. Feldman Decl. ¶3 (ex. A).
- The United States followed up on March 5, 2018 requesting a response on the stipulations, but again received no response from Nature's Way. Feldman Decl. ¶ 4 (ex. B).
- On March 21, 2018, the United States served its Requests for Production and First Set of Interrogatories. Feldman Decl. ¶5 (ex. C).
- On April 20, 2018, one business day prior to the deadline for discovery responses, Ms. Castex, a paralegal working with Nature's Way' counsel, reached out to the United States to request an extension for responses until May 7, 2018. Feldman Decl. ¶ 6 (ex. D).
- Counsel for the United States responded by pointing out that on February 26, 2018, the United States sent proposed stipulations that would alleviate the need for virtually all discovery, and that the responses are necessary in order to move forward with depositions. For that reason the United States indicated it would only agree to an extension under two conditions (1) that Nature's Way respond to the draft stipulation by no later than April 23, 2018, and (2) that Nature's Way produce all responsive documents no later than May 7, 2018. Feldman Decl. ¶ 7 (ex. E).

- On April 23, 2018, Ms. Castex responded that counsel for Nature's Way, Mr. Tillery, was in trial for two weeks, and while he reviewed the proposed stipulations and was comfortable with most of them, he still needed client approval. She also indicated the stipulations were incomplete. Feldman Decl. ¶8 (ex. F).
- On April 23, 2018, counsel for the United States responded and indicated that the United States considered the discovery responses to be untimely if not received by the end of the day. Feldman Decl. ¶ 9 (ex. G). Counsel for the United States pointed out that despite having draft stipulations for two months, counsel for Nature's Way had not reviewed them with their client. Id. With only six weeks left in discovery, the United States could not provide additional time noting that Nature's Way had not met either of the conditions set out by the United States for an extension. Id. Additionally, the United States pointed out the draft stipulations were incomplete because they left unresolved information Nature's Way was to provide. Id. In order to move forward, the United States removed the unresolved issues and provided a new draft of the stipulations and indicated it would be willing to withdraw discovery requests if they were signed by the following day. Id.
- On April 23, 2018, Ms. Castex responded by once again asking for extension, noting that Nature's Way would produce documents by May 7th, and would get back to the United States on stipulations as soon as possible. Feldman Decl. ¶ 10 (ex. H).

- Counsel for the United States responded on April 23, 2018, asking that counsel from Nature's Way contact counsel for the United States to discuss these issues. Feldman Decl. ¶ 11 (ex. I). Counsel for the United States explained that given the limited time for discovery, the parties need to know now, not later, what if any issues exist over the scope of discovery. Id. The response from Nature's Way regarding stipulations and discovery gave no indication of what issues exist and need to be resolved. Id. Counsel for the United States specifically requested that one of the five counsel of record appearing on behalf of Nature's Way in this case, all working in Mr. Tillery's law firm, call her back to attempt to resolve this issue. Id.
- On April 24, 2018 at 4:11 am, Mr. Tillery indicated via email that he would call either that evening or the next day. Feldman Decl. ¶ 12 (ex. J).
- On April 24, 2018 at 6:38 am, counsel for the United States responded via email that she could be reached on her cell phone that evening, and providing her telephone number. Feldman Decl. ¶ 13 (ex. K)
- On April 24, 2018 at 5:31 pm, Mr. Tillery emailed again saying he had just finished for the day in trial and would not call until the following day at lunch. Feldman Decl. ¶ 13 (ex. L)
- On April 26, 2018, having not heard from counsel for Nature's Way, the United States sent an email and letter via Federal Express indicating Nature's Way's responses to discovery were past due. Feldman Decl. ¶ 16 (ex. M).
- As of May 3, 2018, the United States had not heard from any of the counsel of record for Nature's Way. Therefore, the United States emailed Mr. Tillery to

inform him that the United States would be required to file a Motion to Compel if he did not respond by 12 pm Eastern time the following day to let the United States know if Nature's Way would be complying with its discovery request that day. Feldman Decl. ¶¶ 17, 18 (ex. N).

- The United States attached a Good Faith Certificate to its email to Mr. Tillery and requested that he execute and return it. Feldman Decl. ¶ 18 (ex. N)
- As of 5:00 pm Central time, May 4, 2018, the United States had not received any response whatsoever to its email sent on May 3, 2018. Feldman Decl. ¶ 19.

Nature's Way has failed to provide any responses to the discovery propounded by the United States. The United States faces prejudice from this failure, as it needs documents in order to prepare for depositions and pre-trial motions. Nature's Way did not produce any documents as part of its Rule 26 disclosures, compounding the import of timely discovery responses. Nature's Way cannot claim undue burden, as the United States attempted to alleviate virtually all discovery through stipulations. Moreover, Nature's Way did not even attempt to seek an extension until one business day prior to the discovery deadline, though counsel would have known about his trial schedule. Indeed, counsel for the United States reminded Nature's Way about the outstanding stipulations prior to serving discovery. Feldman Decl. ¶¶ 3 and 4 (ex. A and B). Any issues Nature's Way has with the scope of discovery propounded could and should have been raised by now.

Having in good faith attempted to confer with Nature's Way as set forth above, the United States respectfully requests that the Court, pursuant to Fed. R. Civ. P. 37:

- (1) Compel Nature's Way to provide complete responses to United States' First Set of Interrogatories and Requests for Production of Documents by May 7, 2018, as set forth in the attached proposed order; and
- (2) Grant such further relief as justice requires.

Respectfully submitted,

_____/s/_____
ELISE S. FELDMAN
Senior Counsel
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
301 Howard Street, Suite 1050
San Francisco, CA 94105
Tel: (415) 744-6470
Fax: (415) 744-6476
Email: Elise.Feldman@usdoj.gov